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**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES R. THOMPSON,

Appellant-Defendant,

VS.

No. 84A05-0704-CR-198

STATE OF INDIANA,

Appellee-Plaintiff.

APPEAL FROM THE VIGO SUPERIOR COURT

The Honorable Christopher A. Newton, Judge

Cause No. 84D04-0601-CM-118

August 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Charles R. Thompson (“Thompson”) appeals his conviction for Domestic Battery, as a Class A misdemeanor.¹ We affirm.

Issue²

Thompson raises the issue of whether there is sufficient evidence to support his domestic battery conviction.

Facts and Procedural History

Prior to 5:30 p.m. on January 9, 2006, Wendy Thompson (“Wendy”) and Thompson were arguing on the phone regarding their pending divorce. At approximately 5:30 p.m., Thompson arrived at Wendy’s home and entered through the kitchen door. Upon entering, Thompson said, “What the f—k’s going on, Wendy.” Trial Transcript at 8. Thompson then punched her in the face multiple times with his right hand and proceeded to kick her after she fell to the ground. Before leaving, Thompson said, “Make sure this goes peacefully.” *Id.*

Deputy James Palmer (“Deputy Palmer”), an officer of the Vigo County Sheriff’s Department, was dispatched to investigate the incident. When Wendy opened the front door of her home, Deputy Palmer observed that Wendy had a black eye, was visibly shaken and in tears. Wendy informed him that Thompson had come over earlier that evening and hit her repeatedly in the face. Deputy Palmer took pictures of Wendy’s injuries, specifically the

¹ Ind. Code § 35-42-2-1.3(a).

² Although not set out as a separate issue, Thompson also contends that his conviction is fatally inconsistent with the finding of not guilty as to the allegations of domestic battery against Wendy in June of the same year. In support of his argument, he cites Owsley v. State, 769 N.E.2d 181 (Ind. Ct. App. 2002), trans. denied.

swelling and bruises around her right eye. Initially, Wendy supported the idea of Thompson being arrested for the assault. Her demeanor and attitude vacillated however when Deputy Palmer informed Wendy that he was in fact going to arrest Thompson. She became shaken, upset and said, “if you arrest him then Mr. Thompson will kill me.” Tr. at 19. After concluding his interview with Wendy, Deputy Palmer arrested Thompson.

On January 10, 2006, the State charged Thompson with domestic battery, as a Class A misdemeanor. On June 6, 2006, the State filed charges against Thompson from a separate incident that occurred on June 1. Wendy was the alleged victim of the June incident that resulted in charges of Residential Entry, a Class D felony,³ Domestic Battery, as a Class A misdemeanor, and Invasion of Privacy, as a Class A misdemeanor.⁴ The two causes were consolidated for a bench trial. After the State presented its case in chief, Thompson moved for judgment on the evidence for all the charges. The trial court granted the motion as to the residential entry charge, but denied the motion as to the remaining charges. Following the completion of the trial and taking the matter under advisement, the trial court found Thompson guilty of domestic battery based on the events of January 9th and not guilty on the remaining charges. On January 19, 2007, Thompson was sentenced to one year in the Vigo County Jail, with thirty days to be executed at the Vigo County Work Release Center and the remainder of the sentence suspended. Thompson now appeals.

However, the two counts referred to separate acts, which occurred in different places and at different times. Thus, there is no inconsistency. See Jackson v. State, 540 N.E.2d 1232 (Ind. 1989).

³ Ind. Code § 35-43-2-1.5.

⁴ Ind. Code § 35-46-1-15.1.

Discussion and Decision

Our Supreme Court has recently summarized the standard of review to be utilized in assessing claims of insufficient evidence:

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences *supporting* the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder *could* find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted) (emphasis in original).

Thompson urges that there is insufficient evidence to support his conviction of domestic battery because there was conflicting evidence presented at trial. To convict Thompson of Domestic Battery, as a Class A misdemeanor, under Indiana Code Section 35-42-2-1.3, the State was required to show that Thompson: (1) knowingly or intentionally touched Wendy, (2) in a rude, insolent, or angry manner, (3) causing bodily injury. The State also was required to show that Wendy was a spouse, was living as if a spouse, or has a child in common with Thompson. See I.C. § 35-42-2-1.3(a).

There is no dispute that Thompson and Wendy were married at the time and were in the process of obtaining a divorce. However, Thompson argues that there is insufficient evidence to support his conviction because Deputy Palmer's testimony was regarding the

June incident rather than the one in January, no unusual marks were found on Thompson's hand on January 10th, and Thompson's telephone records and his son's testimony contradict Wendy's claim that he was present at her home on the date in question.

At trial the probative evidence supporting the verdict included Wendy's testimony that she had been on the phone with Thompson on the ninth of January, arguing about details of their pending divorce. She said that subsequent to the phone conversation Thompson traveled the five blocks from his house to her house, entering through the kitchen door. He then punched her in the face repeatedly while making references to their pending divorce. The encounter lasted between ten and fifteen minutes. When Deputy Palmer arrived to investigate the incident, he noted and photographed Wendy's swollen and blackened right eye. He also noted that she was shaken and in tears. This evidence is sufficient to support Thompson's domestic battery conviction.

Thompson's arguments based on asserted conflicting evidence are merely an invitation to reweigh the evidence and perform our own assessment of the credibility of the witnesses. We decline Thompson's invitation.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.